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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1119

VIRGINIA RICHMOND,

Petitioner,

vs.

ALBERT WEINER, as Executor of the Estate of Harry Soforenko,

Respondent.

PETITION FOR REHEARING

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Comes now Virginia Richmond and respectfully petitions for rehearing of the decision of this Court on the following grounds, to-wit: That since the decision this Court has had before it another case involving a question of federal jurisdiction where state and federal law is involved and where state and federal regulations are involved. *United Mine Workers of America v. Gibbs,* No. 243, October Term, 1965. (*Seagram v. Hofstetter,* No. 545, October Term, 1965, 86 Sup.Ct. 1254.)

The Tenth Amendment to the Constitution of the United States provides that all laws not specifically given to the federal government are reserved to the states.

See: *United Mine Workers of America v. Gibbs,* No. 243, October Term, 1965; *Elfbrandt v. United States,* No. 656, October Term, 1965, 86 Sup.Ct. 1245.

In the instant case, the United States District Court decided a question of purely state cognizance and purely

state jurisdiction. Although the suit was brought to determine rights to copyrights, the court did not reach that decision in holding that the parties were joint venturers or partners.

The question is purely state concern and will vitally affect lawsuits now pending in the state courts.

In *United Mine Workers of America v. Gibbs*, No. 243, October Term, 1965, decided March 28, 1966, 34 Law Week 4335, this Court stated:

> "A threshold question is whether the District Court properly entertained jurisdiction of the claim based on Tennessee law. . . ."

A threshold question in the case at bar was, likewise, whether the District Court properly entertained jurisdiction based upon California law, although it involved ownership of copyrights.

Although this Court stated that the entire action before the court should comprise but "one case", this Court has always recognized that pendent jurisdiction is a doctrine of discretion.

> "Its justification lies in considerations of judicial economy, convenience and fairness to litigants; if these are not present a federal court should hesitate to exercise jurisdiction over state claims, even though bound to apply state law to them. Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer footed reading of applicable law. Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well. Similarly, if it appears that the state issues substantially predom-

inate, whether in terms of proof, of the scope of the issues raised, or of the comprehensiveness of the remedy sought, the state claims may be dismissed without prejudice and left for resolution to state tribunals."

We respectfully contend that the state issue here is the predominant one of whether there was a joint venture or partnership between the parties during the lifetime of Dr. Soforenko and the court, therefore, should have allowed the matter to go back to the state court for resolution by the state tribunal. We respectfully submit that in failing to do so the federal court has decided a matter solely of state law between the parties and that a rehearing should be granted and the case remanded to the state court.

Upon discovering that this was the situation, the federal court should have rejected jurisdiction and allowed the parties to proceed to the state courts.

A second question of importance which the Court has failed to pass upon is that during the pendency of the appeal the defendant, Dr. Harry Soforenko, died. Pursuant to the document attached to the pleadings, and introduced in evidence as Exhibit 71, there was a right of survivorship in the copyrights to the plaintiff herein and this Court should have acted upon the change of circumstances or remanded the case to the United States District Court to reconsider this change of circumstances, which was not before the court at the time of the trial. In failing to do so and denying certiorari, the Court deprived the petitioner of important rights in the copyrights and also in determining questions still undetermined in the state court as to the relationship of the petitioner and decedent.

The Court, we believe, has overlooked important questions of constitutional and statutory law, namely, the right to be heard fully and to examine and cross-examine witnesses on matters that decide important rights.

Brookhart v. Janis, 16 L.ed.2d 314.

The trial Court in his rulings virtually suppressed substantial evidence so that the full facts of the case have never been fully heard and plaintiff has therefore not had her day in court.

As stated in *Powell v. Alabama,* 287 U.S. 45, 77 L.ed. 158 at 170:

> "The words of Webster, — so often quoted, that by 'the law of the land' is intended 'a law which hears before it condemns,' have been repeated in varying forms of expression in a multitude of decisions."

The constitutional laws forbid even Congress from nullifying the right of due process of law and the right to have witnesses come before the court in a trial for a proper examination and a proper cross-examination. This important right of due process of law is guaranteed, in the case of States, by the *Fourteenth Amendment,* and in the federal government by the *Fifth Amendment.*

Pointer v. Texas, 380 U.S. 400.

We would respectfully ask the members of the Court to re-examine again our Petition for Writ of Certiorari directed to the United States Court of Appeals for the Ninth Circuit, and, in particular, pages 20 through 31 thereof, wherein is set forth an example of one of the many denials of due process of law by the trial court.

For all these reasons, we respectfully pray for rehearing.

Respectfully submitted,

MORRIS LAVINE

Attorney for Petitioner

Certificate of Counsel

Morris Lavine, counsel of record, respectfully petitions for rehearing in the above entitled cause, basing it on matters of law which have been decided since the original petition, to-wit: *United Mine Workers of America v. Gibbs,* No. 243, October Term, 1965, 34 Law Week 4335, and on important questions of copyright law and procedure involved in state and federal relationships, and said petition for rehearing is filed in good faith and not for the purpose of delay.

MORRIS LAVINE